

ITG News
Keeping First Nations Informed

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Message from the Director

Our last issue of ITG News highlighted some of the results from our 2006 Customer Satisfaction Survey, and outlined some areas where ITG would be taking steps to effect operational changes. Several of those areas focused on communications, and specifically the challenges presented by the movement of personnel, offices, and evolving communication technology.

There is an old saying that “there is nothing as constant as change”. The world around us changes so quickly that it is often difficult to keep pace. We utilize technology such as cell telephones, laptop computers, and the worldwide web, to communicate and attempt to stay abreast of changing events. However, change is not limited to technology; it also includes changes in personnel and personal relationships. All of us experience transitions in staffing. Key employees move into other positions, retire, or resign. Tribal enterprises and the IRS office of Indian Tribal Governments are not immune from those changes.

Recognizing this, in conjunction with feedback from the 2006 survey, has led ITG to implement several actions designed to improve the way we interact. These include:

ITG has created a listing on the ITG web site landing page of each tribe and their assigned ITG Specialist and telephone number. This listing will be refreshed every time a change is made in personnel or in telephone numbers.

ITG has created a back-up telephone number (202-283-9800) to reach an ITG employee in the event that a tribe's assigned ITG Specialist is not available. We will guarantee a return telephone call within 24 hours.

ITG will be disseminating information on reporting changes in tribal personnel or contact points to the IRS. For example, page 2 of this edition of ITG News contains an article on reporting address changes.

We will be continuing to seek opportunities to improve communications. I welcome your ideas, whether through future Customer Satisfaction Surveys, Consultation Listening meetings, or via e-mail to me at christie.jacobs@irs.gov.

Christie Jacobs

Consultation Listening Meeting Scheduled for Oklahoma City

In accordance with the Consultation procedures utilized by the Internal Revenue Service, ITG holds Consultation Listening meetings on a rotating basis throughout Indian country. The meetings are open to any tribal representatives, and provide an opportunity to surface concerns, ask questions, provide input and suggestions to ITG, and dialogue with other tribal representatives concerning federal tax issues. Our objective is to hold a meeting within each of the 12 BIA regions at least once every three years.

Our next meeting has been scheduled for Oklahoma City, Oklahoma on Thursday August 2nd. The meeting will be held from 1:00-4:00pm at:
Embassy Suites
1815 South Meridian Avenue
Oklahoma City, Oklahoma 73108

In order that we can adequately plan for the meeting, we ask that those wishing to attend register for the meeting through a link on our web site at www.irs.gov/tribes.

We plan to hold four meetings next year— in Alaska, the Pacific Northwest, Montana, and Phoenix. The specific dates, times, and locations for those meetings will be announced on our web site, and via direct mailings to the tribes in those areas.

Who Receives Your Letters from the IRS? Is this the Correct Person?

If not, has this caused delays in responding, and created unnecessary penalties or assessments? Here is how to correct the situation:

Form 8822 is used to make the appropriate changes. Part II of the form is used to change your business mailing address. Enter the returns that the change is being made for on line 8 or 9. Enter your business name on line 11a and your Employer Identification number on line 11b. Enter the old mailing address on line 12. The "in care of" (c/o) information should be entered on line 13 with the name of the person who should be receiving IRS correspondence. The business location information is entered on line 14.

An owner, officer, or representative must sign the form. An officer is the president, vice-president, chairman, vice-chairman, chief accounting officer, community service coordinator, office specialist, comptroller, etc.

File the form with the appropriate IRS Service Center as listed on the instruction page of form 8822. The form is available online at <http://www.irs.gov/pub/irs-pdf/f8822.pdf>.

Improving Bank Secrecy Act Compliance

IRS continues to work closely with tribal entities to assess their Bank Secrecy Act (BSA) Compliance programs, in an effort to ensure they have the tools and resources necessary to meet federal regulations. Our work includes Outreach/Education for affected tribal employees, BSA Compliance Checks to help identify material weaknesses, and examinations to identify compliance failures. The office of Indian Tribal Governments (ITG) undertakes Outreach/Education and BSA Compliance Checks, while dedicated staff from our Small Business/Self Employed Division conducts BSA examinations on all entities.

ITG's work in this regard has identified many significant problems in tribal entity BSA compliance, including:

- Written BSA Compliance Plans do not exist or are superficial
- No experienced BSA Compliance Officer
- No ongoing training of affected entity staff
- Extreme reluctance to file Suspicious Activity Reports
- Little or no testing to validate BSA procedures are being followed

The BSA examination staff completed 13 examinations of tribal casinos during the initial six months of this year, and 12 of them resulted in determinations that material violations of Bank Secrecy Act regulations had occurred.

These findings show that improvements in BSA compliance are a major issue that tribes face, and ITG stands ready to assist them in determining changes that may be required. However, tribal entities must first recognize that improvements may be required, and then must be willing to work with ITG to implement those changes.

If you have questions regarding the Bank Secrecy Act, or have an interest in determining where compliance improvements could be made, please contact your assigned ITG Specialist.

Employee Tip Income Program Questions

ITG has a full-time Tip Coordinator to assist you with any questions about tip reporting agreements. If you are interested in securing a Tip Agreement, have questions concerning your existing agreement, or have received a notice about tip reporting responsibilities that is unclear, please contact Suzanne Perry at (602) 207-8254.

Assess Your Own Level of Federal Tax Compliance

ITG continues to offer a self-assessment program where qualifying tribal entities can perform their own Compliance Checks. In order to qualify, the tribal entity must be current in the filing of all required federal tax returns, and must have fully paid all federal tax liabilities. They are then able to apply to perform a “self-Compliance Check”, by submitting a request through the “Enhancing Federal Tax Compliance” link on the landing page of the ITG web site at www.irs.gov/tribes, or by notifying ITG in response to a contact we might initiate.

A special template with fill-in-the blank responses is utilized in conjunction with a special web page with linkages to reference material that will assist tribes in both understanding the process, as well as in completing their own Compliance Check.

As part of this process, tribal entities performing their own Compliance Check have the opportunity to effect any corrective actions. An ITG Specialist assists in that process, and will mitigate any penalties wherever possible. For example, if a tribal entity discovered during a self-Compliance Check that they had not filed required Forms 1099, the entity could make a self correction without risk of penalty.

There are several advantages that a tribe can realize through this process. Among them are:

Existing tribal finance staff might gain added insights into key federal tax administration issues that impact their positions and the tribal entity.

A new tribal finance officer could utilize a self assessment to establish a baseline of current federal tax compliance. It would improve their knowledge of the tax issues within the specific entity, and allow them to remedy any problems that might pre-date their assumption of tax responsibilities.

A tribal entity might identify a potential area of noncompliance that they wish to surface to ITG and remedy with minimal risk or cost.

This initiative empowers tribes to self-assess federal tax compliance and effect improvements. We look to further participation by tribal entities who believe they might benefit.

Reporting Abuses/Schemes

We continue to work with tribes and tribal officials to address financial abuses and schemes being promoted in Indian Country. Working together can help ensure the integrity of tribal finances, and eliminate the threats posed by individuals with schemes that appear “too good to be true” and often are. If you are aware of financial impropriety, or of a promoter advocating a scheme that appears highly suspect, you can contact the ITG Abuse Detection and Prevention Team at (716) 686-4960, or via e-mail at: tege.itg.schemes@irs.gov

How to Report Advanced Wages or a Loan

Is the money you are giving to your employees between paydays an advance on wages or a loan? If it is an advance on wages, are you reporting it properly? Most employers treat that money as an advance on unearned salary and will not include it in income, but that may not necessarily be correct. Revenue Rulings 68-239 and 68-337 discuss advances as wages and advances as loans.

Revenue Ruling 68-239 addresses the question of the status of advanced payments actually or constructively made by the employer to the employees, for Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and the Collection of Income Tax at the Source on Wages (federal income tax withholding). According to this revenue ruling, if an employer advances payroll payments to an employee with the obligation that the employee will perform services for the advance, that advance is considered "wages" for Federal employment tax purposes at the time of payment, not when the employee performs the services. The main reasoning behind this ruling is because if an employee receives an advance on wages, subsequently quits or is fired and is not obligated to pay that advance back, that amount

would not have been included in income because the employee never preformed a service.

Revenue Ruling 68-337 addresses the same question, however the circumstances are different. According to this revenue ruling, if an employer advances payroll payments to an employee with the obligation that the employee will perform services for the advance and the employee must acknowledge the advance by signing a either a note or loan. That advance is considered to be a loan and not included in wages until the employee performs services which pays off the note or loan. The main difference in this ruling is the employer makes the employee sign a note or loan, so if that employee quits or is terminated, he or she is still liable for the note/loan and will be obligated to pay in cash or have it withheld from their final "net" paycheck.

Here is an example: This Tribal Employer has a semimonthly pay period (paydays are on the 1st and 15th of the month). Employee John comes in on the 8th of the month and requests an advance of \$200.00 on his wages. According to Revenue Ruling 68-239, the \$200.00 advanced to John is included in income at the time of payment on the 8th of the month and there must be FICA and federal income tax withheld from that payment. The advance check amount will be less the FICA and income tax withholding amount, so his check could be around \$180.00, depending upon his individual circumstances.

Now let's say the same facts, except Tribal Employer makes John sign a note or loan document for the \$200.00 advance. According to Revenue Ruling 68-337, that amount is not income to John on the 8th of the month because he signed a note. He will receive a check for the full \$200.00, it will not be included in his income and he will owe the full amount.

The bottom line, if you are advancing wages to your employees and not including it in income nor are you deducting the employee's share of FICA or federal income tax withholding amount at the time of the advance, you are not reporting the advances correctly.

IMPORTANT INFORMATION FOR EMPLOYERS, PAYERS, AND AGENTS

The Internal Revenue Service has taken steps to respond to the problems identified by employers and payers regarding the use, instructions, and purpose of the Form 2678, "Employer Appointment of Agent". The new revision took effect May, 2007.

Indian Tribal Governments Division continues to try to bring relevant and necessary information to our customers by providing them with up-to-date information that may impact tribal governments and their business enterprises. The following information is provided in order to provide you with a brief

background of the purpose of this form, and to help you determine whether this form is appropriate for your use when appointing a payer or agent to conduct the filing or payment relating to Forms 941, 944, 945, and Form 1042.

Revenue Procedure 70-6 allows an employer or payer to authorize an "IRC section 3504 agent" to file tax returns, and deposit and pay employment or other withholding taxes on an employer or payer's behalf. The employer or payer uses Form 2678 to appoint an agent with the Internal Revenue Service. However, Section 3504 does not cover the employer's Form 940, Employer's Annual Federal Unemployment Tax Return (FUTA), filing requirement. Employers who are required to file the annual Form 940 must do so under their own Federal Employer Identification Number, instead of the designated payer/agent.

The newly revised Form 2678 now provided clearly defined language which authorizes the IRS to disclose confidential tax information to the agent and any third party the agent may contract with, such as a reporting agent or CPA. Further, when the IRS approves your Form 2678 appointment request, we send a letter of confirmation to the agent. When an employer, payer or agent asks to revoke an appointment, we send an acknowledgement to the requestor, confirming the revocation. As an employer, payer or agent, the revocation process is much easier to request.

The new form is posted to www.irs.gov and employers and payers should immediately replace any Forms 2678 with version dates prior to May 2007 with the new form. Once the new form is released, we will return any submissions on obsolete forms and ask each sender to resubmit their request using the new version. Employers, payers and agents with appointments already on file do not need to take any action unless they wish to revoke an existing appointment.

The May 2007 revision of Form 2678 is available both from www.irs.gov and by mail at 1-800-829-3676. Instructions and the IRS mailing address are included with the two-page form.

Slot Machine and Video Lottery Terminal Jackpots Excluded from CTRC Filing Requirements

On June 21, 2007, the Financial Crimes Enforcement Network (FinCEN) issued a new rule that exempts casinos from the requirement to file currency transactions reports (CTRs) on jackpots from slot machines and video lottery terminals. The rule also exempts reportable transactions in currency, under certain conditions, involving certain money plays and bills inserted into electronic gaming devices. This final regulation, which amends Bank Secrecy Act regulations, does not change the regulation requiring casinos to report all other transactions in currency of more than \$10,000.

The casino industry sought relief from this reporting requirement relating to jackpots from slot machines and video lottery terminals because these particular jackpots make up a significant percentage of CTRs filed by casinos, but present a low risk of money laundering. FinCEN accepted that customers who win more than \$10,000 in jackpots will have won those funds because of the workings of the random number generator in electronic gaming devices and, thus, are not likely to form part of a scheme to launder funds through casinos.

If you have any questions relating to this change, please contact your designated ITG Specialist.

Southwest Indian Tribal Government Specialists

Due to recent personnel changes and realignment of tribal assignments, the current Southwest ITG Specialists are listed below with their assigned tribes and pueblos. If you have a question, and your assigned Specialist is not available, please contact Anita Gentry, Southwest Group Manager, at (505) 837-5573. Or e-mail her at Anita.D.Gentry@irs.gov.

Aaron Coleman
Aaron.H.Coleman@irs.gov
(602) 207-8751

Arizona: Fort McDowell Yavapai Nation, Havasupai Tribe, Kaibab-Paiute Tribe, Yavapai-Apache Nation, Yavapai-Prescott Indian Tribe, Hopi Tribe, Hualapai Tribe, and Navajo Chinle Agency,

Utah: Paiute Indian Tribe of Utah and Ute Indian Tribe of Utah

Jimmy Crook
Jimmy.C.Crook@irs.gov
(505) 837-5613

New Mexico: Jemez Pueblo, Laguna Pueblo, Santa Ana Pueblo, Santo Domingo Pueblo, Taos Pueblo, Tesuque Pueblo, Zia Pueblo,

Colorado: Ute Mountain Ute Tribe

Lonnette Graham
Lonnette.L.Graham@irs.gov
(505) 837-5536

New Mexico: Acoma Pueblo, Isleta Pueblo, Mescalero Apache, Pojoaque Pueblo, San Ildefonso Pueblo, Sandia Pueblo, Zuni Pueblo, Navajo Nation – Eastern Agency, San Juan Pueblo,

Colorado: Southern Ute Tribe

Theresa Nosie

Theresa.S.Nosie@irs.gov

(602) 207-8734

Arizona: Navajo Nation-Agencies: Western (Tuba City), Northern (Shiprock), and Fort Defiance (Fort Defiance), White Mountain Apache Tribe, Salt River Pima-Maricopa Indian Community, Tonto Apache Tribe,

Utah: Skull Valley Band of Goshutes

Suzanne Perry

Suzanne.V.Perry@irs.gov

(602) 207-8254

On Detail

Michelle Risk

Michelle.L.Risk@irs.gov

(520) 205-5022

Arizona: Ak-Chin Indian Community, Cocopah Indian Tribe, Colorado River Indian Tribes, Fort Yuma-Quechan Indian Tribe, Gila River Indian Community, Pascua Yaqui Tribe of Arizona, San Carlos Apache Tribe, and Tohono O'odham Nation

Catherine St. Gregory

Catherine.M.StGregory@irs.gov

(505) 986-5260 ext. 243

New Mexico: Cochiti Pueblo, Jicarilla Apache Tribe, Nambe Pueblo, Picuris Pueblo, San Felipe Pueblo, Ohkay Ohwingey Pueblo, Santa Clara Pueblo,

Texas: Ysleta Del Sur Pueblo
